

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES EDWARD RABON,

Defendant-Appellant.

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UNPUBLISHED  
February 25, 2003

No. 236010  
Wayne Circuit Court  
LC No. 94-006850-01

Before: Kelly, P.J., and White and Hoekstra, JJ.

PER CURIAM.

Defendant appeals as of right his sentences of two and one-half to five years in prison for probation violation following his plea-based convictions of fleeing and eluding a police officer, MCL 257.602a, and attempted possession with intent to deliver less than fifty grams of cocaine, MCL 333.7403(2)(a)(iv), MCL 750.92. We affirm.

On June 30, 1994 defendant pleaded guilty of fleeing and eluding and attempted possession with intent to deliver less than fifty grams of cocaine in exchange for dismissal of a charge of delivery of less than fifty grams of cocaine. On July 18, 1994 the trial court sentenced defendant to concurrent terms of five years' probation, with the first forty-five days in jail. He received credit for twenty-seven days served on each sentence.

Defendant was charged with violating his probation on three occasions in 1997 and 1998. In March 1997 he pleaded guilty to violating his probation by failing to report, failing to provide documentation of completion of community service, and failing to obtain a G.E.D. In October 1997 defendant pleaded guilty to violating his probation by sustaining a misdemeanor conviction for being a minor in possession of alcohol, failing to pay court costs, failing to complete community service, and failing to obtain a G.E.D. The trial court continued him on probation on both occasions. In April 1998 defendant was charged with violating his probation by being arrested for carrying a concealed weapon, MCL 750.227; however, the record is unclear as to whether he was convicted of violating his probation on this occasion.

In June 2000 defendant was charged with second-degree murder, MCL 750.317. Subsequently, he pleaded guilty to violating his probation in this case by being charged with second-degree murder. The trial court sentenced defendant to concurrent terms of two and one-half to five years in prison for probation violation, with credit for 327 days served on each

sentence. The trial court also sentenced defendant to fifteen to twenty-five years in prison for the conviction of second-degree murder.<sup>1</sup>

Defendant argues that his minimum terms of two and one-half years' are disproportionate to his circumstances and those of the offenses. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). We disagree and affirm defendant's sentences. The judicial sentencing guidelines<sup>2</sup> do not apply to probation violators and are not to be considered when fashioning a sentence for probation violation. *People v Williams*, 223 Mich App 409, 412-413; 566 NW2d 649 (1997). The key test of the proportionality of a sentence is whether it reflects the seriousness of the matter. *People v Houston*, 448 Mich 312, 320; 532 NW2d 508 (1995). Defendant received concurrent terms of probation for two offenses, including a narcotics-related offense. He repeatedly violated his probation by failing to comply with its terms, and by committing new criminal offenses. The trial court continued defendant on probation on these occasions; however, he did not take advantage of these opportunities to reform his behavior, and ultimately was convicted of second-degree murder. Defendant's behavior indicated an unwillingness to conform his actions to the requirements of the law. His minimum terms of imprisonment do not constitute an abuse of discretion under the circumstances. *Id.*, 320-321.

Affirmed.

/s/ Kirsten Frank Kelly  
/s/ Helene N. White  
/s/ Joel P. Hoekstra

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<sup>1</sup> Defendant's claim of appeal from that conviction (Docket No. 236009) is pending in this Court.

<sup>2</sup> Defendant's underlying offenses occurred prior to January 1, 1999; therefore, the statutory sentencing guidelines are not applicable to this case. MCL 769.34(1).